

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11034 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BABUBHAI M PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR PJ VYAS for Petitioners

Mr.A.G.URAIZEE,ASSISTANT GOVERNMENT PLEADER for the Respondent.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 16/03/96

ORAL JUDGEMENT

Whether an order under the provision of Section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Tenancy Act') for assumption of management of land which allegedly remained uncultivated, is legal and valid and secondly what is the impact and ramification of the provisions of Section 42 of the Urban Land (Ceiling and

Regulation) Act, 1976 (' ULC Act' ), are the two main questions requiring examination and adjudication in this petition under Articles 226 and 227 of the Constitution of India.

The petitioners are the agriculturists holding land at Chandkheda, talauka Gandhinagar, measuring 1 acre- 37 gunthas. The Deputy Collector passed an order for assuming management of the disputed land which allegedly remained uncultivated for three years which is under challenge in this petition. Section 65 of the Tenancy Act reads as under :

"65. (1) If it appears to the State Government that for any two consecutive years, any land has remained uncultivated or the full and efficient use of the land has not been made for the purpose of agriculture, through default of the holder or any other cause whatsoever not beyond his control, the State Government may, after making such inquiry as it thinks fit, declare that the management of such land shall be assumed. The declaration so made shall be conclusive.

(1A) The assumption of management of land under sub-section (1) on the ground that the full and efficient use OF THE land has not been made for the purpose of agriculture shall be for such period as the State Government may from time to time fix, so, however, that such period shall not exceed ten years in the aggregate.

(2) On the assumption of the management, such land shall vest in the State Government during the continuance of the management and the provisions of Chapter IV shall, mutatis mutandis apply to the said land;

Provided that the Manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment:

Provided further that, if the management of the land has been assumed under sub-section (1) on account of default of the tenant, such tenant shall cease to have any right or privilege under Chapter II or III, as the case may be, in respect of such land, with effect from the date on and from which such management has been assumed."

The petitioner had applied for permission under Section 21 of the Ceiling Act for exemption from excess land on the ground of a scheme for construction of houses for

weaker section after the petitioners filed a declaration in form No. 1 under Section 6(1) of the ULC Act. Such permission was granted by the competent authority on 6.11.1987. Provisions of Section 21 of the Ceiling Act read as under :

"21.(1) Notwithstanding anything contained in any of the foregoing provisions of this chapter, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time ,in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units (each such dwelling unit having a plinth area not exceeding eighty square meters) for the accommodation of the weaker sections of the society,in accordance with any scheme approved by such authority as the State Government may, by notification in the official gazette,specify in this behalf,then, the competent authority may, after making such inquiry as it deems fit,declare such land not to be excess land for the purposes of this chapter and permit such person to continue to hold such land for the aforesaid purpose,subject to such terms and conditions as may be prescribed,including a condition as to the time limit within which such buildings are to be constructed.

(2) Where any person contravenes any of the conditions subject to which the permission has been granted under sub-section (1),the competent authority shall,by order, and after giving such person an opportunity of being heard ,declare such land to be excess land and thereupon all the provisions of this chapter shall apply accordingly."

The competent authority granted permission under Section 21 of the ULC Act on certain conditions. The disputed land came to be included in residential zone also. However, the said land is shown wrongly to be agricultural land as contended by the petitioners.

The Ahmedabad Urban Development Authority ('AUDA' for short) has also granted permission for construction of residential houses on the disputed land. This permission was granted on 17.9.1992. The petitioners thereafter moved the competent authority for non-agricultural permission under Section 65 of the Bombay Land Revenue

Code,1879 ('BLR Code' for short). The said permission is not granted so far. The petitioners even after the permission,continued to carry on agricultural operations for some time.

The Deputy Collector issued a show cause notice dated 23.6.1993 as to why management of the disputed land should not be resumed by the Government on the ground that the land is not cultivated during the years 1987-88, 1988-89, 1990-91 and 1991-92. The notice was contested by the petitioners. However, the impugned order came to be passed under Section 65 of the Tenancy Act for assuming management of the disputed land by the Deputy Collector holding that the disputed land has remained uncultivated continuously for three years.

In light of the facts and circumstances and the settled proposition of law, the impugned order is perverse and illegal. It is found from the revenue record produced in the petition that the disputed land was cultivated during the period of 1988-89 and 1989-90. The land was cultivated even during 1990-91. It is true that the disputed land was not cultivated during the period 1991-92 and 1992-93. A specific contention could not be raised before the Deputy Collector by the petitioners that the disputed land remained uncultivated on account of the fact that permission under Section 21 of the Ceiling Act was accorded by the authority. This aspect is very clear from the record. The permission obtained by the petitioners is produced on record which clearly goes to show that permission under Section 21 of the Ceiling Act was given by the competent authority on 6.11.1987. Permission given by the AUDA is also obtained for construction of houses for weaker section. Obviously, therefore, when the disputed land was to be used for the purpose of construction of houses for weaker section of the society pursuant to the permission under Section 21 of the Ceiling Act, the same may not be used for cultivation. AUDA's permission came to be granted on 17.9.1992. Permission for non-agricultural use under Section 65 of the BLR Code was also awaited. In these circumstances, it cannot be contended that there was a fit case for assuming management of the disputed land on the ground of non-cultivation of the land. In the opinion of this court, the order of the Deputy Collector is manifestly perverse and patently illegal. Therefore, it is required to be quashed.

There is one more important aspect which creates vulnerability to the impugned order under Section 42 of the Ceiling Act. Provisions of the Ceiling Act are given

over-riding effect on other laws. Once permission under Section 21 of the Ceiling Act is granted, action under the provisions of Section 65 would not assume any survival value. Section 42 of the Ceiling Act reads as under :-

"42.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any customs, usage or agreement or decree or order of a court,tribunal or other authority."

In the result,the petition is allowed and the impugned order is quashed and set aside. Rule is accordingly made absolute to the aforesaid extent with no order as to costs in the circumstances of the case.

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